



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 1, 1949

Mrs. Ella Mae Murphy
Vice-President
State Board of Hairdressers
and Cosmetologists
Austin, Texas

Opinion No. V-869

Re: The legality of licens-
ing a portable barber
and beauty service
which does not have a
permanent business lo-
cation.

Dear Mrs. Murphy:

Reference is made to your recent request which
reads in part as follows:

"Please advise this department as soon
as possible if we would be within the law in
licensing the Southwest Portable Barber and
Beauty Service Company to operate a unit such
as described in the attached circular.

"The address given on the application
reads 'Dallas hospitals and hotels' and the
question on the application blank as to ap-
proximate floor space of the shop was an-
swered 'portable on wheels.'"

Sections 10 (a) and 14 (c) of Article 734b,
V.P.C., provide in part as follows:

"Sec. 10. (a) . . . It shall be unlawful
for a person, firm or corporation to operate a
beauty shop or a beauty school as defined in
this Act unless the same is a bona fide estab-
lishment with a permanent and definite loca-
tion completely and permanently separated by
solid walls with no openings from rooms used
wholly or in part for residential or sleeping
purposes. . . ."

"Sec. 14. (c) The establishment of itin-
erant shops is hereby expressly prohibited,
and it shall be unlawful for any person, firm
or corporation to operate a beauty shop as de-
fined in this Act, unless the same is a bona

bona fide establishment with a permanent and definite location. Any license granted under the terms of this Act shall permit the licensee to practice in only such bona fide established beauty shop; . . ." (Emphasis added.)

We believe under the plain provisions of the above quoted sections, that before an applicant can be granted a license to operate a beauty shop, he must show the Board that he has a permanent and definite location for such shop. This provision has remained in the Statutes unchanged since 1935. There are several reasons why such a requirement is made, one of which is in order that the State Board of Cosmetologists may inspect said location to see if it conforms to the sanitary rules and regulations such as proper ventilation, lighting and running hot and cold water, as well as the other provisions of the law. Also, if there were no definite and permanent location for beauty shops, the State inspectors could never make proper inspections as required by law. Moreover, to permit such a practice would amount to nothing more than the licensing of an itinerant shop, which is expressly prohibited under the plain provisions of the Act. It is apparent from the applicant's application that he does not have a permanent and definite location.

In view of the foregoing, we agree with your conclusions that the State Board of Cosmetologists is not authorized to issue a license to operate a beauty shop where the applicant has no permanent and definite location.

Section 18 of Art. 734b, V.P.C., provides in part that:

"Provided, further, that nothing in this Act shall prohibit a person licensed under this Act from performing duties as prescribed by this Act in the home of a customer in cases of emergency when sent by a shop owner. . ."

We believe that the above provision tends to strengthen us in our conclusion since the Legislature provided that in cases of emergencies a person who is a licensed beauty operator may perform all the duties prescribed by this Act in the home of any customer when sent by a shop owner. We believe that such provision is broad enough to include hotels and hospitals. However, the person performing such services must be a duly licensed operator and sent by a shop owner.

Mrs. Ella Mae Murphy, page 3 (V-869)

SUMMARY

The State Board of Cosmetology is not authorized to issue a license to operate a beauty shop where such shop does not have a permanent and definite location.

Yours very truly,

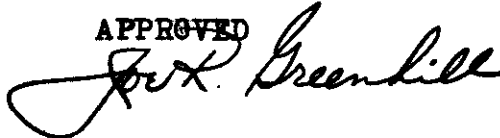
ATTORNEY GENERAL OF TEXAS

By



Bruce Allen
Assistant

APPROVED



FIRST ASSISTANT
ATTORNEY GENERAL

BA:bh:jrb